IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13558 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KIRANBAHEN ALIAS KIDIBAHEN W/O GULMAMAD ALIAS KALIYO

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 13558 of 2004

MS BANNA DUTTA for SUBHADRA G PATEL for Petitioner

MR HM PRACHCHHAK AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/02/2005

ORAL JUDGEMENT

1. This Special Civil Application under Article 226 of the Constitution of India has been filed by the

petitioner challenging her detention in pursuance of the order passed against her by Police Commissioner, Rajkot City, on 10th of August, 2004, in exercise of powers conferred upon him under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA Act for short). The petitioner is under detention as bootlegger from 10th of August, 2004 in pursuance of the above order.

2. The grounds of detention as placed on record reveal that the detaining authority took into consideration two types of material to arrive at the subjective satisfaction. Firstly, the detaining authority took into consideration two criminal cases registered against the petitioner under the Bombay Prohibition Act, and secondly the detaining authority took into consideration two in-camera statements of witnesses, as recorded by the sponsoring authority on 1st of August, 2004 and as verified by the detaining authority on 2nd of August, 2004, and the identity of the witnesses were not disclosed by the detaining authority, claiming privilege under Section 9(2) of the PASA Act.

3. Two cases came to be registered against the petitioner for the breach of the Bombay Prohibition Act, one at Rajkot Taluka Police Station, on 19th of July, 2004 and second at 'B' Division Police Station, Rajkot City, on 29th of July, 2004. It was alleged that in the first offence, the petitioner was found in possession of country liquor to the extent of 300 liters while in the second case also she was found in possession of 300 liters of country liquor. The detaining authority considered exhaustively and thoroughly investigation papers in both the cases registered against the petitioner. Secondly, the detaining authority also considered two in-camera statements. The first witness referred to an incident occurred on 17th of July, 2004. While he was present at his business place, one of the accomplice of the petitioner was selling country liquor near the place of business of the witness. The witness requested such person to vacate the place and to go away from there. Thereafter, such accomplice of the petitioner brought the petitioner and other accomplices along with him and said to the witness that around the resident of the petitioner, the police was keeping watch and, therefore, it was impossible for her to sell prohibited liquor there. The witness stated that if near his business place, police raid was carried out, the witness would be put to difficulty, and again the witness requested the petitioner and her accomplices not to sell the prohibited liquor near the place of his business.

The petitioner got excited, so witness stated that if the petitioner employs high handedness, he would be constrained to call police. On saying so, two accomplices of the petitioner started beating the witness. One of them took out the knife and threatened the witness that if the witness would file complaint before the police, he would be done to death. In the meanwhile, a crowd was gathered, but on account of fear of the petitioner, nobody dared to rescue the witness. On the contrary, to establish fear and terror, the petitioner and her accomplices with open knife rushed towards the crowd, so on account of fear, the persons gathered there, run helter - skleter. By act of supplication, the witness could save his skin. The next incident which the witness referred to occurred on 10th of July, 2004. The witness had been to his business place at about 10.00 a.m., while witness was passing near the house of the petitioner, he was stopped by the petitioner and called by the petitioner that she was in need of money and was not in a position to purchase prohibited liquor on credit. The petitioner demanded Rs. 5,000/- from the witness and stated that after one month, after sale of prohibited liquor, the amount would be returned to the witness. The witness did not comply with the demand of the petitioner. Thereupon, the petitioner started abusing the witness and the witness was slapped. The witness stated to the petitioner that if the witness was manhandled by them, he would be constrained to file a complaint against the petitioner before the police. On saying so by the witness, on a call from the petitioner, her two male accomplices were emerged and as directed by the petitioner, both of them started beating the witness. One of the accomplice took out knife and with that knife, threatened the witness that if the witness dared to file complaint to the police against the petitioner, he would be done to death. The witness was frightened. In the meantime, the residents of the area were gathered, but none intervened on account of fear of the petitioner. On the contrary, both the male accomplices of the petitioner rushed towards the crowd with knife, so the people ran helter - skelter. On account of fear, by act of supplication, the witness could save his skin.

4. Relying upon the above material, the detaining authority came to the conclusion that the petitioner was engaged in storing, selling and transporting the country liquor and was harassing innocent citizens, who became obstacles in her illegal activities of selling prohibited liquor. In view of the detaining authority the petitioner was bootlegger within the meaning of the PASA Act, and that the bootlegging activities of the

petitioner were required to be prevented forthwith. The detaining authority also came to the conclusion that the illegal activities of the petitioner were prejudicial to the maintenance of public order and was affecting adversely to the public health. After considering the remedies available against the petitioner in general law, the detaining authority came to the conclusion that there was no other alternative except to detain the petitioner under the PASA Act, which is under challenge in this petition.

5. Learned Advocate Ms. Banna Dutta for learned Advocate Mrs. Subhadra G Patel for the petitioner and learned AGP HM Prachchhak for the respondents were heard at length.

6. Out of various grounds urged on behalf of the petitioner and opposed and controverted by learned AGP, it appears that this petition can be examined and disposed of only on the issue that whether there was credible and cogent material placed before the detaining authority to come to the conclusion that by the activities of the petitioner, the public order was disturbed and public health was adversely affected.

7. To reach to the subjective satisfaction that bootlegging activities of the petitioner were prejudicial to the maintenance of public order and public health, the detaining authority must rely upon credible and cogent material indicating that the activities of the detenu directly or indirectly were causing or were likely to cause harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or the public health. While undertaking this exercise, the detaining authority has to draw a clear line between the cases falling within the category of breach of law and order and the cases falling within the category of breach of public order.

8. Referring to the two criminal cases filed against the petitioner under the Bombay Prohibition Act for the possession of prohibited liquor, and going through the investigation papers as placed on record, it is found that those two cases came to be filed against the detenu because she was dealing in prohibited liquor. The possession of prohibited liquor is a breach under the Bombay Prohibition Act and hence cases came to be filed. However, merely filing cases under the Bombay Prohibition Act would not result in a conclusion that the activities of the petitioner were disturbing the public order or was

affecting adversely to the public health. At the most, the petitioner might have committed breach of the provisions of law, for which the petitioner may be tried and punished if found guilty, but surely the act constituting the offence in dealing in prohibited liquor cannot be said to have affected the even tempo of the life of the community nor the activities revealed through the investigating papers indicate that in the activities alleged through these cases, society at large or section of the society or community or particular community was involved. Therefore, these cases may be instances of breach of law and order, but cannot be branded as activities disturbing the public order or affecting the public health.

9. Further while referring to the in-camera statements, as recorded by the sponsoring authority and verified by the detaining authority, it must be borne in mind that while reaching to the subjective satisfaction about the alleged activities of the petitioner, it would be necessary for the detaining authority to consider fall out, reach and impact of the activities of the petitioner and thereafter to come to the conclusion that such activities were capable of disturbing the public order. Two incidents, as narrated through in-camera statements, reveal individual disputes than to involve society at large or even disturbing the even tempo of the life of the community. The potentiality of the act alleged through in-camera statements, even from the bare reading of them, are not capable to be branded as to the activities disturbing the even tempo of life of the community or society at large or section of the society. No widespread danger or harm to the society could be inferred from the statements of the witnesses. Therefore, even after taking them on their face value, those incidents, may be instances of disturbing law and order, which can be taken care of by general law and by no stretch of reasoning, such activities can be branded to be disturbing the public order or affecting adversely to the public health.

10. In the matter of ASHOKBHAI JIVRAJ @ JIVABHAI SOLANKI vs. POLICE COMMISSIONER, SURAT and Ors. as reported in 2000 (1) GLH 393, wherein the Division Bench of this Court after considering the decision of the Apex Court, observed in paras 20 and 21 as under :

"20 The Division Bench then considered the law laid down by the Apex Court in Piyush Kantilal v. Commissioner of Police, Ahmedabad City, AIR 1989 SC 491 and Two. Devaki vs. State

of Tamil Nadu, AIR 1990 SC 1086. In Piyush Kantilal, similar circumstances were before the detaining authority and it was alleged that detention of the detenu was necessary in order to prevent activities of the detenu in maintenance of public order. Similarly in Two. Devaki, panic amongst people in the hall in which the incident took place and in nearby vicinity was highlighted. It was also alleged that people were scared and had run helter-skelter. In spite of such allegations, the Supreme Court held that they were not cases of maintenance of public order and hence, no action of preventive detention was uncalled for.

21. The Division Bench, following the above cases, observed that in the opinion of the Supreme Court, the selective phrases in the statements would not take out the case from maintenance of law and order to that of maintenance of public order and as power of detention, could not be used for maintenance of law and order, but only for public order, the order of detention made in such circumstances could not be upheld.

Again in Mustakmiya Jabbarmiya Shaikh vs. M.M. Mehta, Commissioner of Police and Others, 1995 (2) GLR 1268 (Sc), the Supreme Court considered the relevant decisions on point including the decisions in Arun Ghosh v. State of West Bengal, 1979 (1) SCC 98 and held that stray incidents would not affect "public order" and order of detention cannot be passed in such cases."

11. The present set of facts are squarely covered by the above decision of this Court in the case of Ashokbhai Jivraj @ Jivabhai Solanki (supra) and therefore the subjective satisfaction arrived at by the detaining authority in respect of disturbance of public order by the alleged activities of the petitioner cannot be said to be legal, valid and in accordance with law. The order under challenge, therefore, is required to be quashed and set aside on this ground alone.

11. In the result, the petition is allowed. The order passed by Commissioner of Police, Rajkot City, on 10th of August, 2004, against the petitioner in exercise of powers under Section 3(2) of the PASA Act is hereby quashed and set aside. The petitioner - Kiranbahen alias

Kidibahen, W/o Gulmamad alias Kaliyo Devipujak, is hereby ordered to be set at liberty forthwith if she is not required to be detained in jail for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

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